

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ECHOSPAN, INC.,

Plaintiff,

v.

MEDALLIA, INC.,

Defendant.

Case No. 22-cv-01732-NC

**PRETRIAL PREPARATION
ORDER**

This Pretrial Preparation Order supplements the Case Schedule at ECF 176 and prepares for the pretrial conference and trial. A pretrial conference is scheduled for October 11, 2023, at 2:00 p.m. A jury trial is scheduled to begin on October 23, 2023, at 9:30 a.m. Both will be conducted in person in San Jose courtroom number 5. The trial is in first position on October 23, meaning it is not trailing any other criminal or civil matter.

I. MOTIONS IN LIMINE

The parties must file their motions in limine by September 27, 2023, with responses due by October 4, 2023. No party may file a reply without leave of Court. The total number of pages each party submits for all motions and all responses must not exceed 15 pages. While it is up to each party to decide how much space to allocate for their motions and how much for their responses, the parties must each stay within the 15-page limit (for example, a party may allocate 9 pages for their motion and 6 pages for their response). The Court will hold a hearing on the motions in limine at the pretrial conference.

II. JOINT TRIAL READINESS BINDER

The parties are ordered to provide the Court with two copies of a Joint Trial Readiness Binder. The documents and binder are due by September 27, 2023, at noon at the San Jose Courthouse. The parties must also file a copy of the information in the Joint

1 Trial Readiness Binders in ECF. The Joint Trial Readiness Binders must each contain an
2 index and copies of filed documents with an ECF header reflecting the item's docket
3 number and filing date, including:

4 **A. Joint Statement of the Case**

5 The parties must submit a jointly agreed-upon summary of the case, not to exceed
6 one page. This statement of the case will be read to the jury at jury selection. If the parties
7 cannot agree on a statement, each party must submit its own one-page statement.

8 **B. Proposed Order Re: Trial Stipulations**

9 The Court expects that the parties will agree to a variety of stipulations regarding
10 the conduct of the trial. A proposed order outlining all such stipulations must be presented
11 to the Court.

12 **C. Witness Lists**

13 The parties must submit an updated list of all witnesses likely to be called at trial
14 (other than solely for impeachment or rebuttal), with a brief statement following each
15 name describing the substance of the testimony to be given and a time estimate of the
16 direct and cross examinations. This information must be presented in chart format and
17 organized by party. Witnesses who will be testifying as experts should be identified as
18 such and included in a separate expert witness list (see below).

19 **D. Expert Witness Lists**

20 The parties must submit an updated list of all expert witnesses with a summary that
21 clearly describes the expert's theories and conclusions, a curriculum vitae, and expert
22 reports. Witnesses not included on the list may be excluded from testifying.

23 **E. Updated Exhibit Lists Annotated with Stipulations and Objections**

24 The parties must submit an updated list of all documents and other items to be
25 offered as exhibits at trial (other than solely for impeachment or rebuttal), with a brief
26 description of each exhibit's contents and the identity of each sponsoring witness. As
27 applicable, the exhibit list must specify whether the parties stipulate to admit the exhibit or
28 the grounds for any objections to the exhibit. The exhibit list must also include an

1 additional column so that the Court can track the date on which each exhibit is admitted.
2 Prior to submitting the list, the parties must meet and confer and attempt to stipulate as to
3 the admissibility of each exhibit. This information must be presented in chart format and
4 organized numerically.

5 **F. Updated List of Discovery Excerpts**

6 The parties must list those excerpts from depositions, interrogatory answers, or
7 responses to requests for admission (other than those solely for impeachment or rebuttal)
8 likely to be used at trial. Prior to submitting the list, the parties must meet and confer and
9 attempt to resolve any disagreements regarding designations or counter-designations. The
10 parties must: (1) identify any remaining legal objections to the excerpts on the list itself,
11 and (2) attach copies of the disputed excerpts in a separate appendix so that the Court can
12 review the disputed materials. The parties must provide a single proposed order with each
13 disputed designation to enable the Court to rule on whether permission to use each excerpt
14 is granted, granted with modification, or denied.

15 **G. Proposed Voir Dire and Jury Questions**

16 The parties must include any proposed questions for the court-directed voir dire and
17 a joint proposed jury questionnaire. If any questions are contested, each party must state
18 the basis for proposing or opposing the question. In addition to including the proposed
19 jury instructions in the binder, the parties must submit the proposed jury instructions in
20 Word format to ncpo@cand.uscourts.gov by September 27, 2023.

21 **H. Proposed Verdict Form**

22 The parties must include a joint proposed verdict form with the questions arranged
23 in a logical sequence. If the parties cannot agree on a verdict form, each party must submit
24 its own proposed form.

25 **III. ELECTRONIC COPIES OF TRIAL DOCUMENTS**

26 The parties also must send ncpo@cand.uscourts.gov an electronic copy, in Word
27 format, of the following documents listed above: (1) Proposed Order Re: Trial
28 Stipulations, (2) Proposed Order Re: Discovery Excerpts; (3) Proposed Jury Instructions;

(4) Proposed court voir dire and jury questionnaire; (5) Proposed Verdict Form; and (6) Statement of the Case. These are due September 27, 2023, at noon.

IV. STIPULATIONS RE: ADMISSIBILITY

The parties must make a good faith effort to stipulate to exhibits' admissibility. If stipulation is not possible, the parties must make every effort to stipulate to authenticity and foundation absent a legitimate objection.

V. EXHIBITS

Exhibits must be provided to the Court by September 27, 2023, at noon at the San Jose Courthouse. The parties must provide two sets of exhibits in binders with exhibits marked, tabbed, and indexed. Exhibit binders may be delivered or mailed directly to Chambers in San Jose. The parties must coordinate with the Courtroom Deputy for other delivery.

Each exhibit in the binder must be pre-marked with an exhibit tag placed in the top right corner of the first page of a document. The exhibit tags must be a color other than white. A page of blank trial exhibit tags can be found on the Court's website. If an exhibit is a physical object (rather than a document), the parties should take a picture of the object and include the picture in the binder.

Upon the conclusion of the trial, each party must retain its exhibit through the appellate process. It is each party's responsibility to make arrangements with the Clerk of Court to file the record on appeal.

VI. SCHEDULING OF JURY SELECTION

The parties must notify the Court whether they wish to proceed with a jury or bench trial by September 27, 2023. If the parties decide to proceed with a jury trial, the jury will be selected on October 23, 2023. Opening statements and the first witness testimony will start on October 24, 2023.

VII. TRIAL LIMITS

The Court anticipates giving each side a total of 12 hours to present its case. The

1 Court will discuss at the pretrial conference if this should be shortened. This includes all
2 aspects of trial (e.g., objections, examinations, arguments) except jury selection. There
3 will be no dark days planned for this trial, which will run 9:30 a.m. to 4:30 p.m. each
4 weekday, with a lunch break and periodic breaks as needed for the trial participants.

5 **VIII. MISCELLANEOUS**

6 **A. Trial Transcripts**

7 If a party wishes to order a trial transcript, the order must be placed by September
8 27, 2023. Instructions on how to file a transcript order using Form CAND-435 are
9 available at: www.cand.uscourts.gov/transcripts.

10 **B. Electronic Equipment**

11 If a party wishes to use electronic equipment or other large items, the party must file
12 a request and proposed order with the Court by September 27, 2023. Equipment not
13 provided by the Court must be tested in the courtroom prior to trial. Arrangements may be
14 made with the Courtroom Deputy, Lili Harrell, at (408) 535-5343.

15 **C. Jury Orientation Video**

16 The Northern District of California requires potential jurors to watch a video on
17 unconscious bias before they are sent to the courtroom for voir dire. The Court encourages
18 the parties to watch the orientation video at:

19 <https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/>.

20 **D. Questions from Jury**

21 If the parties select a jury trial, the Court may give an instruction to allow questions
22 from the jury in accordance with Ninth Circuit Model Instruction 1.15 ("Questions to
23 Witnesses by Jurors"). The Court will discuss this option at the pretrial conference.

24 **IT IS SO ORDERED.**

25
26 Dated: April 21, 2023

27 
NATHANAEL M. COUSINS
United States Magistrate Judge